

Officials opposed to U.S. health-care law seeking interstate compact

By Guy Gugliotta, Published: September 17

State governors and legislators opposed to the federal health-care law are eyeing a novel approach to escape its provisions: joining an “interstate compact” that would replace federal programs — including Medicare and Medicaid — with block grants to the states.

To date, legislation has been drafted or introduced in 14 states and brought to the floor by lawmakers in at least nine. Three Republican governors — in Georgia, Oklahoma and Texas — have signed the compact into law, while Missouri Gov. Jay Nixon (D) let the compact become law without signing it. Supporters say they hope to get 40 states to put it on the legislative calendar in 2012.

If a significant number of states pass the compact, supporters plan to submit it to Congress for approval in the same way that the body approves interstate compacts regulating commerce, transportation, and resource conservation and development.

Although critics do not dismiss the compact out of hand, they say its chances of its becoming law are close to nil. Montana Gov. Brian Schweitzer (D) said in vetoing his state’s bill, “we will put a person on Neptune” before Congress passes the compact. States have never sought a compact to shield them from a whole area of federal law, let alone been granted permission to form one. Some state officials, including Republicans such as Arizona Gov. Jan Brewer who vetoed the compact, are worried that it would usurp their authority. Many others point out that joining a compact would disqualify their states from receiving automatic federal funding increases during hard times and prevent them from getting their fair share of the available pool of money.

Still, even if its prospects are more dubious than other methods of getting rid of last year’s Patient Protection and Affordable Care Act — congressional repeal, judicial challenge or a Republican presidential victory in 2012 — the compact has become a popular way for conservatives to highlight their opposition.

And compacts might receive even more attention now that Texas Gov. Rick Perry signed his state’s law July 18, just three weeks before he announced his candidacy for the Republican presidential nomination. The primacy of states’ rights over federal powers is a tenet of tea party Republicans whose support is key for

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candidates during the primary season.

For the original drafters, health care is only the first compact in a longer list that would include measures giving states broad powers to control banking, education and energy. "Our view is that a good policy made under bad governance will morph into bad policy," said Houston businessman Leo Linbeck III, a key financial backer of the compact initiative. "Progress doesn't mean centralizing power. Progress pushes decision-making power back to the people."

The health-care compact grew out of discussions and research conducted a year ago at the Center for Tenth Amendment Studies at the Austin-based Texas Public Policy Foundation, a conservative policy group. The 10th amendment to the Constitution leaves to the states all powers not conferred upon the federal government.

"Founding Fathers like James Madison sold the Constitution to the individual states by predicting that the accumulation of federal power would never happen because the states were too strong," said Mario Loyola, director of the Tenth Amendment Center. "The federal government now regulates virtually all of the things the framers said it would never regulate."

The history of compacts goes back to the colonial period, and more than 200 are currently in force. Many coordinate activities between contiguous states, such as the Port Authority of New York and New Jersey. Others, such as the Driver License Compact and the Wildlife Violators Compact, offer reciprocal recognition of laws and licenses in member states.

The Health Care Compact, however, is the first one that attempts to shield states from a whole area of federal law. It is four pages long and would replace the current federal health-care system with block grants to the states. The initial grants would be pro-rated on the basis of 2010 federal funding levels. Thereafter, allocations would rise to reflect inflation and state population increases. The compact would not apply to military personnel, veterans or Native Americans.

With this template in hand, the bill's adherents formed the Health Care Compact Alliance late last year. Eric O'Keefe, chairman and chief executive of the conservative Sam Adams Alliance, is the Compact Alliance chairman, and Linbeck serves as vice chairman. O'Keefe said the Alliance has so far spent "not much more" than \$1 million.

Late in 2010, O'Keefe won support for the compact from leaders of the Tea Party Patriots, one of the main tea party groups that have emerged across the country. Linbeck said "our big push" will come in early 2012, when he and O'Keefe are hoping that 25 to 40 legislatures may take up the bill. O'Keefe said he would prefer to have at least 15 states pass the compact before it is sent to Congress.

Signing on has drawbacks for states. The compact cannot be amended unless all participating states agree to the amendment and resubmit the bill to their legislatures. For elected officials who want to put their stamp on their state's laws, this can be a hard pill to swallow.

Also, if states were underfunded in 2010 at the federal level, they would be stuck there under the compact. "We have 3 million people in Medicare and another 4 million on Medicaid and CHIP (the Children's Health Insurance Program)," said Anne Dunkelberg, associate director of the Austin-based Center for Public Policy Priorities, a think tank focusing on low- and moderate-income Texans. "Just now [in Texas] we're \$600 below the national average per person for Medicaid."

And, Dunkelberg added, adherence to the compact would eliminate the guarantee of a federal match to state Medicaid spending, make a state ineligible for one-time entitlements such as the 2009 stimulus and cause

states to lose access to automatic increases when enrollment goes up during a recession.

O’Keefe described the compact as “non-partisan,” but admitted Democratic support could be sparse if it required an alliance with the Tea Party Patriots and local organizations that routinely rally in opposition to “Obamacare.”

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